Supreme Court, U.S.
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No.

In The
Supreme Court of the United States

Cyrus Y. Kim,
petitioner,

vs.

CITY OF FEDERAL WAY,
respondents.

On Petition for Writ of Certiorari
to United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Petitioner
Cyrus Y. Kim Pro Se
1807S. 308th CT. #11
Federal Way, WA 98003
(253) 946-1834

Questions presented for review

1. Is U.S. appeals court's affirmed judgment disregarded important federal question for the wrong issue of wrong cause of action a right decision?

2. Is U.S. appeal court's affirmed judgment contradicted the Supreme Court Rulings to uphold a lower court ruling a right decision?

3. Is City of Federal Way's punishment deprived petitioner Kim of liberty for one year without due process of law on the speculative violation of the alleged unconstitutional city park ordinances constitutional?

4. Are the city park ordinances, which regulate private behavior to protect individuals from privately inflicted harms, constitutional for the permissible city objectives to make the park users safe by Fourteenth Amendment?

5. Are the City park ordinances limiting or depriving the liberty without due process of law the Congress' authorized legislation for limiting or depriving the liberty protected under Fourteenth Amendment by §5 of Fourteenth Amendment?

6. Didn't U.S. district court's orders violated Federal Rules of Civil Procedure abuse its discretion?

A list of all parties

Petitioner:

Cyrus Y. Kim Pro Se
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Respondent (1):

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I. OPINIONS BELOW

U.S. Appeals Court's order denied the motion for reconsideration rendered on January 27, 2010 is reprinted on p. 22.

U.S. Appeals Court's order affirmed district court's summary judgment rendered on December 14, 2009 is reprinted on p. 22.

U.S. district court's order denying motion for reconsideration rendered on May 15, 2009 is reprinted on p. 24.

U.S. district court's order granting motion for summary judgment and denying motion for sanctions rendered on May 6, 2009 is reprinted on p. 25.

II. JURISDICTION

(A) Jurisdiction is conferred upon the Court by 28 U.S.C. §1331 and §1367.

(B) On January 27, 2010, U.S. appeals court denied motion for reconsideration. A writ of certiorari filing on March 26, 2010 is timeliness, because it is less than 60 days.

III. STATEMENT OF CASE

A. Facts

1. City of Federal Way's order of expulsion from a city public park for one year

City of Federal Way ("City") ordered not to enter a City park "for any reason whatsoever for a period of one year" under the reason committed "criminal trespass" upon the City public park two times on the

speculative violation of the alleged unconstitutional City park ordinances as below:

The City's
ORDER OF EXPULSION AND NOTICE OF TRESPASS

This letter is An Order of Expulsion and Notice of trespass, pursuant to Federal Way City Code 11-55 and you are hereby informed that as of today, Cyrus Kim, you are forbidden to enter the premises of Steel Lake Park located at 2410 S. 312 St. and 2645 S. 312 ST., Federal Way, WA for any reason whatsoever for a period of one year.

To enter such property may result in prosecution for the crime of Trespass under RCW 9A.52 and related municipal code section(s). A violation by entry upon the listed property may result in a fine, imprisonment, or both.

THIS NOTICE IS VALID FOR ONE YEAR FROM THE DATE OF ISSUANCE.

You are hereby **Trespassed** from Steel Lake Park for **violation of FWCC 11-75(1) two times** within the last 12-consecutive months. **On at least two separate occasions** in the last 12-consecutive months you illegally practiced golf in a Federal Way Park without authorization and, furthermore, caused risk of injury to another person in doing so. One June 1, 2007, you were asked by Parks employees to stop hitting real golf balls in Steel Lake Park. The incident was investigated by the Police Department, case number 07-8527. In his report, Officer Tucker noted that he told you to use plastic practice golf

balls in the Park, not real ones. On July 16, 2007, you were again seen hitting real golf balls in Steel Lake Park and were asked to stop by a parks employee.

A copy of this letter shall be sent to the Federal Way Police Department pursuant to FWCC 11-55(d) for enforcement of this order.

s/ Donna Hanson 8-28-07
Director of Parks

2. Alleged unconstitutional the City park ordinances, FWCC 11-55 and 11-75

In *DeShaney v. Winnebago County Department of Social Service*, 489 U.S. 189, 195-196 (1989), the Supreme Court broadly held that "the government generally has no duty to protect individuals from privately inflicted harms..." So, the wrongful act of an individual even in the public park is simply private wrong.

In *Civil Right Cases*, 109 U.S. 3 (1883), the Supreme Court held that Congress only could regulate government conduct and could not regulate private behavior under the Fourteenth Amendment.

However, the park ordinances of FWCC 11-55 and 11-75 regulate private behavior to protect from privately inflicted harms **without any hearing provision** for any City's action or punishment.

FWCC 11-75 requires getting the director's authorization and makes all recreational scope of exercise unlawful but **no provision of how to get the director's authorization.**

FWCC 11-55(a)(1) regulates the private conduct requiring high moral standard; 11-55(a)(2) regulates private conduct and discrimination based on race,

nationality, religion, disability, and sexual orientation; 11-55(a)(3) and (b)(3) regulates the conduct which U.S. Alcohol, Tobacco, and Controlled Substance Law is already regulating; 11-55 (b)(4) regulates the conduct which State Arms law is regulating; 11-55(a)(4) and (5) and (b)(2) regulate individual invasion of individual rights.

A complete copy of FWCC 11-55 Expulsion from parks:

(a) In addition to another penalty imposed pursuant to this article, the director or designee may order the expulsion of any person from any park for a period of one to seven days if he or she observes such person:

(1) Using abusive or disruptive language or engaging in conduct that disrupts a park facility or program.

(2) Directing ethnic or offensive remarks at another person based on such person's actual or perceived race or ethnic group, nationality, religion, disability, sex or sexual orientation.

(3) Using tobacco products in an unauthorized area or facility.

(4) Causing injury or risk of injury to another person or persons.

(5) Causing damage or risk of damage to city property.

(6) Violating any provision of this article.

(b) The director or designee may order the expulsion of any person from any park for a period of seven days to one year if such person:

(1) Has been expelled from the park two or more times in any 30-day period.

(2) Causes injury to another person.

(3) Sells, possesses or uses alcohol or illegal drugs.

(4) Possesses or uses any weapon.

(5) Commits more than one violation of this article in any 12-consecutive-month period.

(c) Any order of expulsion under this section shall be in writing and shall be sent by certified mail to the person expelled at his or her last known address or delivered in person.

(d) The director or designee may forward the written notice of expulsion along with the certified mail receipt to the department of public safety (i.e. police department).

(1) The written notice of expulsion shall be a notice of trespass.

(2) Any person on city park property, in violation of the written notice of expulsion, will be guilty of trespass.

(3) The notice of trespass and expulsion will expire on the date indicated in the written notice of expulsion.

(e) Any person who enters a park during a period during which he or she has been expelled under subsection (a) or (b) of this section is guilty of violating this article and will be subject to the enforcement in FWCC 11-54.

A complete copy of FWCC 11-75 Games and sports:

It is unlawful to practice or play baseball, softball, football, hockey, tennis, badminton or

other games of like character or to hurl or propel any airborne or other object in such a manner as to interfere with or put at risk other park users.
(1) It is unlawful to practice or play golf or archery in any city park, unless authorized by the director.

3. Speculative violations of the City park ordinances in two occasions.

In two occasions, Kim didn't violate any provision of the park ordinances, because Kim's activity for the recreational scope of exercise scared nobody and there was no risk to injure anybody as below. So, the City's expulsion order for one year was completely based on the committed criminal trespass twice upon the public park by FWCC 11-55(d)(1) and (2).

Occasion One

There is an approximately 140-yard long and 25-yard wide open sand space on the beach in the Steel Lake public park. Kim always used #9 iron for 30 min. exercise sometimes hitting a baseball or soccer ball, but a driver-club only four times during almost two years.

On June 1, 2007 early morning between 6:00 and 8:00, after ten minute dumbbell exercise and five minute body swing exercise with a golf club without hitting any ball, Kim made three circled marks at the point of approximately 60, 70, and 80 yards away from a hitting area to try approach shots. After sixth shot, one woman came with a dog and sat and was watching the golf balls' dropping approximately 30 yards away from the golf balls' dropping area and 100 yards away from the hitting area. After cleaning

the park restrooms, Young Yi approached to Kim and stopped the exercise. When Kim asked "why," he answered "for public safety." After saying, "mind your own business," Kim tried to hit another ball. Young Yi threatened to call 911. When Kim responded, "go ahead," he called to his supervisor. During argument for a while, the woman disappeared. Kim returned home, omitting the rest exercise including jogging.

On June 15, 2007, Kim read City Ordinance 91-11[1] posted on the fence at first time, which could not be seen easily as, "Firework, firearms, alcoholic beverages, controlled substances, golf and archery are strictly prohibited at all times."

On June 25, 2007, Kim mailed three letters, one for the City Manager, one for City Council, and one for manager of park maintenance office, indicating the City Ordinance's unconstitutional factors for revision, otherwise, Kim would file a suit claiming huge amounts beyond the price for limited fundamental right.

Nobody responded at all.

Occasion Two:

On July 16, 2007, after dumbbell, parallel and monkey bar, body swing exercise, and 30 minute jogging, still twenty minutes were left to eight o'clock. Kim was curious to hit golf balls toward the artificial soccer field. After having covered a hitting mat on the outside of the soccer field, the sparse lawn area, in order to prevent any damage to the lawn, Kim was hitting golf balls. A man approached

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[1] Ordinance 91-11 was different from the current FWCC 11-55 and 11-75.

and said that he was a supervisor. He stopped the hitting golf balls. When Kim asked, "no damage here, no damage there, nobody is there, why not?" He answered:

> In the soccer field only soccer games are allowed; baseball batting practice, any other game or practicing except the soccer game, or even walking around the soccer field with a dog is not allowed, because Soccer Association donated $500,000 for the artificial soccer field.

During the argument, a woman came walking with her dog. The supervisor said, "Madam, walking with a dog around the soccer field is not allowed." The dog was so friendly and understood various human orders.

4. Deprivation of liberty without due process of law for one year by excessive punishment.

In *Cummings v. Missouri*, 71 U.S. 277, 18 L.Ed 356 (1866), U.S. Supreme Court explained that "[t]he deprivation of any rights, civil or political, previously enjoyed, may be punishment."

Hence, the City's expulsion from the public park for one year under the reason committed criminal trespass upon the City park on the speculative violation of the alleged unconstitutional park ordinances was excessive punishment which **deprived Kim of liberty without due process of law for one year.**

5. Cause of action

The cause of action of this case is the federal question allegedly violated Fourteenth Amendment of the City's punishment for one year under the reason of committed criminal trespass upon the City public park two times on the speculative violation of the park ordinances and of the park ordinances regulating private behavior to protect individuals from privately inflicted harms, and claiming damages of $9,526,000.00 for the actual cost for 30 minute exercise at the driving range for one year, for the deprived liberty for one year and for the infliction of mental distress for one year by the City's excessive punishment on the basis of state torts law under supplementary jurisdiction pursuant to 28 U.S.C. §1367.

B. U.S. district court's judgments

1. First order denied the default judgment violated Federal Rules of Civil procedure ("Fed. Rules").

On May 2, 2008, Kim filed a complaint with the court. Defendant didn't serve answer within 20 days, violating Fed. Rules 12(a)(1)(A)(i). On June 4, 2008, Kim filed motion for default judgment. 35 days later, on June 6, 2008, defendant served answer after the motion for default judgment was filed. On July 8, 2008, U.S. district court denied the motion as:

> The court DENIES the motion. Defendant City of Federal Way ("the City") filed a notice of appearance on May 8, 2008 (Dkt. #4) and an answer on June 6, 2008 (Dkt. #7). Although the City's answer filed shortly after its time for responding to the complaint had lapsed, the court finds no prejudice to Mr. Kim from the

> City's untimely answer. Mr. Kim also failed to give the City proper notice of his motion for default judgment. *See* Fed. R. Civ. P. 55(b)(2) ("If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of application at least 3 days before the hearing.") For these reasons, the court DENIES Mr. Kim's motion for default judgment (Dkt. #6).
>
> Fed. Rules 55(b)(2):
> *By the Court.* In all other cases, the party must apply to the court for a default judgment... If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 3 days before the hearing...

The 35 days lapsed after the answer deadline were not "shortly after its time for responding to the complaint." The district court distorted the meaning of Fed. Rules 55(b)(2), because the notice of appearance was not a pleading required by Fed. Rules 7(a)(2), and when the motion for default judgment was filed, the notice of the motion for default judgment was automatically given by CM/ECF filing system. It was the first district court's unfairly biased order violated Fed. Rules 55(b)(2).

In this case, violating nine provisions of Fed. Rules and contradicting previous Supreme Court rulings three times with intent, U.S. district judge makes five unfairly biased orders and then makes the order of dismissal contradicted the Supreme

Court rulings to uphold a 9th circuit ruling and voids the jury trial set on June 9, 2009.

2. The granted summary judgment on the basis of a lower court ruling of permissible city objectives for public safety was groundless and contradicted the Supreme Court rulings and §5 of Fourteenth Amendment.

U.S. district court judge granted summary judgment on the basis of a 9th Circuit ruling of *Kawaoka*—permissible or legitimate city objectives for public safety—as below:

> P. 28: In order for Mr. Kim to establish a violation of his substantive due process right, he is required to prove that the enactment of FWCC 11-55 and 11-75 was "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare." *Kawaoka v. City of Arroyo Grande*, 17 F.3d 1227, 1234 (9th Cir. 1994)...
> P. 29: That is, whether the City, in passing FWCC 11-55 and 11-75 was acting in pursuit of permissible city objectives and, if so, whether the means adopted were reasonably related to accomplishment of these objectives. *See Reno v. Flores*, 507 U.S. 292, 295 (1993).
> P. 29: As for FWCC 11-55—the ordinance permitting the City to exclude people from city parks—the court likewise finds that this ordinance is reasonably related to the City's objectives in keeping its park safe for the residents of Federal Way who use the park in a safe and respectful manner.

However, in *Kawaoka,* the ordinance was to regulate the City of Arroyo Grande's general land-use plan and temporary water moratorium. So, the ordinance was for "permissible or legitimate city objectives for public health, safety, and general welfare", but the park ordinances regulating private behavior to protect individuals from privately inflicted harms were not for "permissible city objectives for public safety" and rather limit or deprive park users' liberty under the groundless permissible city objectives for public safety and contradicted the Supreme Court rulings of *DeShaney, Civil Right Cases,* and all other Supreme Court rulings cited page 18-21.

Moreover, the park ordinances were not the Congress' authorized legislation for the limitation or deprivation of one park user's liberty for another park user in the public parks by §5 of Fourteenth Amendment, because only the Congress has the power to enforce, by appropriate legislation, the limitation or deprivation of liberty under Fourteenth Amendment by §5 of Fourteenth Amendment.

Therefore, upholding a lower court Ninth circuit ruling for the groundless and inapplicable permissible or legitimate city objectives for public safety, the district court made a contradicted judgment to the Supreme Court rulings and §5 of Fourteenth Amendment.

3. The judgment disregarded important federal question for the wrong issue of wrong cause of action.

P. 29: Mr. Kim does not have a fundamental right to do belly exercise in a public park utilizing a

> golf club and baseballs or golf balls... *See Doe v. City of Lafayette*, 377 F.3d 757, 768 (7th Cir. 1995). The court is satisfied that the City's objectives, i.e., public safety in its park, is reasonably related to a ban on hitting golf balls in a public park. Accordingly, the court does not find that FWCC 11-75 is unconstitutional...
> P. 29: Accordingly, the court finds that Mr. Kim's expulsion from the city park for hitting golf balls was not a violation of any fundamental right and that the City's ordinances did not violate Mr. Kim's due process rights.

This case was not challenging that "Kim's expulsion from the City park for hitting golf balls" violated Kim's fundamental right, but was challenging that the City's expulsion order **for one year** under the reason committed "criminal trespass" two times upon the City public park on the speculative violation of the park ordinances deprived Kim of liberty **for one year without due process of law** protected under Fourteenth Amendment and was challenging that the park ordinances for the private behavior to protect individuals from privately inflicted harms were unconstitutional park ordinances. So, district court judgment was completely wrong issue of wrong cause of action disregarded the key federal questions.

4. Denied order for sanctions

The City's motion for summary judgment, which is reprinted infra p. 30 - 38, completely contradicted all previous Supreme Court rulings cited in the complaint on the basis of the wrong lower court case of *Kawaoka*. However, contradicting the Supreme

Court rulings and showing unfairly biased favor, the district court judge ruled as below:

> P. 29: Mr. Kim claims that the City's motion was brought for the "improper purpose to harass, cause unnecessary delay and needlessly increase the cost of litigation." The court finds the opposite to be true and therefore denies Mr. Kim's motion for sanctions. The City has defended this frivolous lawsuit in a respectful and professional manner. The City's motion for summary judgment was thoughtful, accurate, and the proper method for requesting that this matter be dismissed.

C. U.S. appeals court's affirmed judgments

1. Affirmed order was an identical copy of district court's wrong judgment contradicted the Supreme Court rulings and §5 of Fourteenth Amendment.

Appeals court three judges affirmed under same "the permissible or legitimate city objectives for public safety", contradicting the Supreme Court rulings of *DeShaney, Civil Right Cases,* other Supreme Court cases, and §5 of Fourteenth Amendment and distorting the cause of action as below.

> Cyrus Yoo Kim appeals pro se from the district court's summary judgment for defendant in his 42 U.S.C. §1983 action alleging denial of his fundamental right to exercise by hitting golf balls in a public park...We review de novo...We affirm. The district court properly granted summary judgment for defendant because Kim failed to

> show that he has a fundamental right to exercise by hitting golf balls in a public park...
> Moreover, the City's ordinances prohibiting the hitting of golf balls in public parks and sanctioning those who do are rationally related to the legitimate public interest of safety in city park. *See Kawaoka v. City of Arroyo Grande,* 17 F.3d 1227, 1234 (9th Cir. 1994)...

This case was not for 42 U.S.C. §1983 action claiming that Kim had a fundamental right to exercise by hitting golf balls in a public park—distorted cause of action.

Clearly, "permissible or legitimate city objectives for public safety" was inapplicable to this case.

Moreover, there was no scrutinized judgment for the key federal questions—why the City's expulsion order for one year didn't deprive Kim of liberty without due process of law, why it was not an excessive punishment, and why Kim committed the criminal trespass upon the public park.

The appeals court also denied the motion for reconsideration which cites the Supreme Court rulings one more time and indicates such wrong affirmed judgment, as, "Kim's motion for reconsideration is construed as a petition for penal rehearing, and, as such, the petition is denied" (p. 22).

2. Affirmed judgment for the denied motion to compel discovery

The appeals court three judges ruled as (p. 24):

> The district court did not abuse its discretion by denying the motion to compel discovery because

> Kim's interrogatories were directed at non-parties..."

Fed. Rules is adopted by the court itself but provided by the action of Congress. So, the Fed. Rules, just as a statute passed by the legislature, has the force of law, and thus, U.S. judges and the parties cannot refuse or violate the Fed. Rules. So, district judge's violation of Fed. Rules was abuse of his discretion.

The Constitution applies to all the City employees' actions involved in this case, because each employee's action is the City's action. The City didn't disclose all employees' names or addresses involved in this case, violating Fed. Rules 26 (a)(1)(A). Any party can request discovery conference if needed by Fed. Rules 26(a)(1)(A). There is no provision requiring the discovery conference for interrogatory questions. So, the discovery conference is not prerequisite for interrogatory questions. So, Kim requested the answers including the address and names involved in this case to reduce unnecessarily wasting time in jury trial, because City of Federal Way is a vicarious party for the employees' unconstitutional acts. No matter whether it was action of a governmental entity or agency or action of city, all City employees involved in this case must furnish the information to the nominal party pursuant to Fed. Rule 33(b)(1)(B), which reads as:

> 33(b)(1) *Responding Party.* The interrogatories must be answered:
> (A) by the party to whom they are directed; or
> (B) if that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who must furnish the information available to the party.

Respondent counsel objected all answers including the address and names of the employees involved in this case for the reason that the interrogatory questions were directed to non-party, the employees, violating Fed. Rules 33(b)(1)(B). But district judge denied as:

> The court directs Mr. Kim to Federal Rule of Civil Procedure 33, which explains that interrogatories may **only be directed to parties**. Mr. Kim did **not name any of the City's employees in his lawsuit. The employees are therefore not parties and not required to answer interrogatories in this case.**

However, objecting all answers under the reason of non-party, district judge adopted the answer of assistant City Manager, Cary M. Roe, P.E., as the answer of **its representative** of City of federal Way as:

> The City shall file with the court, and serve on Mr. Kim, either (1) an explanation for the absence of a signature **by its representative** or (2) a signed copy of the interrogatory responses pursuant to Fed. Rules 33(b) by Tuesday, March 24th at noon."

Under the current Council/Manager form of city government of Federal Way, the City Manager's administrative responsibility is equivalent to Mayor's and the City Manager is involved in this case. So, City Manager's answers were especially required as a representative of the City, but district judge objected City Manager's answers under the reason of **non-party** but **adopted a complete non-party's answers** as the answers of the City's representative. The assistant City Manager Cary M.

Roe, P.E was not involved in this case and completely ineligible for a representative for the City. So, district judge violated Fed. Rules 33(b)(1)(A) and 33(b)(1)(B) and 33(b)(3) and (4). Therefore, district judge abused his discretion for the order denied the motion to compel discovery.

3. Affirmed judgment for the denied motion for sanctions

Appeals court affirmed the district court's unfairly biased order stated supra p. 13 as, "the district court also did not abuse its discretion by denying Kim's motion for sanctions" (p. 24).

Respondent's counsel Christensen has been admitted to practice in the Bar of U.S. Supreme Court. So, he knew that he could not violate Fed. Rules and that he could not repudiate the previous Supreme Court rulings on the basis of 9th Circuit ruling of *Kawaoka*. But in this case he violated eight provisions of Fed. Rules and two times repudiated the previous Supreme Court rulings; one for the motion for summary judgment cited in complaint and another, the reply to the opposition to the motion for summary judgment. Such conduct violated good moral and professional character as an attorney and increased the cost and time and agony for this litigation. The jury trial set on June 9, 2009 was delayed for almost one year and eventually was voided by the district judge by granting the motion for summary judgment which could not be granted. So, district court abused his discretion by contradicting all previous Supreme Court rulings.

IV. ALL REPUDIATED PREVIOUS SUPREME COURT RULINGS TO UPHOLD

A LOWER COURT RULING.

Four judges of both courts repudiated all previous Supreme Court rulings cited in the complaint and opening brief to uphold the lower court, the 9th Circuit ruling for *Kawaoka*.

A. Repudiated definition of the park from the Supreme Court rulings.

In *Evans v. Newton*, 382 U.S. 296 (1966), the Supreme Court held as:

> that **running the park was a public function and that it had to comply with the Constitution even if managed by a private entity**. Justice Douglas, writing for the Court, explained: "The service rendered even by a private park of this character is **municipal in nature... A park** ... is more like a fire department or police department that traditionally serves **the community**. **Mass recreation through the use of parks is plainly in the public domain...** (*Id.* at 301-302).

In *Roth v. Board of regents*, Supreme Court held as:

> In a Constitution for **a free people**, there can be no doubt that the meaning of **"liberty"** must be **broad indeed...** (408 U.S. 564 (1972)).

The Supreme Court has held that **some liberties** are so important that they are deemed to be **"fundamental rights"** and that **generally the government cannot infringe upon them unless strict scrutiny**, and in ***Moore v. City of East Cleveland,*** 431 U.S. 494, 503 (1977), the Supreme

Court has said that **fundamental rights include those liberties** that are "deeply rooted in this Nation's history and tradition."

B. Completely repudiated Supreme Court rulings on the basis of inferior court case of *Kawaoka*.

DeShaney was stated on, supra, p. 3.

In the *Civil Rights Cases*, the Supreme Court declared the Civil Right Act of 1875 unconstitutional, which provided private conduct and individual invasion of individual rights as, "Justice Bradley, writing for the Court, said the "Fourteenth Amendment ... is prohibitory upon the States. **Individual invasion of individual rights** is not the subject matter of the amendment."

Therefore, the Supreme Court made it clear that Congress's authority was only over state and local governments and their officials, not over private conduct: "It does not authorize Congress to create a code of municipal law for the regulation of private rights..." The Court explained that private action was governed by state law and not by the United States Constitution: "The wrongful act of an individual, unsupported by any such authority is simply a private wrong, or crime of that individual..."

C. Repudiated Supreme Court Rulings for deprivation of liberty

In *Washington v. Harper*, 109 Nev.966, 860 P.2d 705 (1903), the Supreme Court separated procedural and substantive issues regarding the authority of prison administrator to give anti-psychotic drugs to

an inmate **against his will**. The Supreme Court found that the administrator of anti-psychotic drugs to a defendant under certain circumstances constituted **a deprivation of liberty that was protected by due process.**

In *Hudson v. Palmer,* 468 U.S. at 530, 104 S.Ct. at 3202, 82 L.Ed.2d at 405 (1984), the Supreme Court has held:

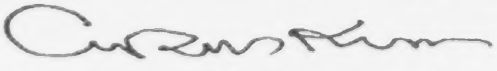
> that **intentional infliction of harm on the person** or property of a prisoner **violates due process and that procedural due process principles require the state to grant a post-deprivation hearing** to prisoners who allege intentional destruction of their liberty or property. *Hudson v. Palmer*, 468 U.S. 517,104 S.Ct. 3194, 82L.Ed.2d 393 (1984), on remand 744 F.2d 22(4th Cir. 1984).

All previous Supreme Court rulings make clear FWCC 11-55 and 11-75 are unconstitutional and the City's action of expulsion from the public park for one year and the City employees' orders to stop the recreational scope of exercise deprived Kim of liberty, the fundamental right in the form of liberty without due process of law protected under Fourteenth Amendment.

V. CONCLUSION (RELIEF SOUGHT)

For all reasons stated above, petitioner respectfully request that this Court grant review of this case.

Respectfully submitted on March 26, 2010,



Cyrus Y. Kim Pro Se

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CYRUS Y. KIM, Appellant/Plaintiff, v. CITY OF FEDERAL WAY, Appellee/Defendant.	CASE NO. 09 - 35504 D.C. No. 2:08-cv-0688- JLR Western District of Washington, Seattle ORDER (FILED JAN 27 2010)

Before: ALARCÓN, TROTT, AND TASHIMA, Circuit Judges.

Kim's motion for reconsideration is construed as a petition for penal rehearing, and, as such, the petition is denied.

No further filings shall be accepted in this closed case.

****

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CYRUS Y. KIM, Appellant/Plaintiff, v. CITY OF FEDERAL WAY, Appellee/Defendant.	CASE NO. 09 - 35504 D.C. No. 2:08-cv-0688- JLR MEMORADOM* (FILED DEC 14 2009)

Appeal from the United States District Court for

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

the Western District of Washington James L. Robart, District Judge, Presiding

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, AND TASHIMA, Circuit Judges.

Cyrus Yoo Kim appeals pro se from the district court's summary judgment for defendant in his 42 U.S.C. §1983 action alleging denial of his fundamental right to exercise by hitting golf balls in a public park. We have jurisdiction under 28 U.S.C. §1291. We review de novo. *Brown v. Cal. Dep't of Corr.*, 554 F.3d 747, 749 (9th Cir. 2009). We affirm.

The district court properly granted summary judgment for defendant because Kim failed to show that he has a fundamental right to exercise by hitting golf balls in a public park. *See Shanks v. Dressel,* 540 F.3d 1082, 1087 (9th Cir. 2008) ("To state a substantive due process claim, the plaintiff must show as a threshold matter that s state actor deprived it of a constitutionally protected life, liberty or property interest.") Moreover, the City's ordinances prohibiting the hitting of golf balls in public parks and sanctioning those who do are rationally related to the legitimate public interest of safety in city park. *See Kawaoka v. City of Arroyo Grande,* 17 F.3d 1227, 1234 (9th Cir. 1994) ("Legislative acts that do not impinge on fundamental rights or employ suspect classifications are presumed valid, and this presumption is overcome only by a clear showing of arbitrariness

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** The panel unanimously finds his case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

and irrationality.") (citation and internal quotation marks omitted).

The district court did not abuse its discretion by denying the motion to compel discovery because Kim's interrogatories were directed at non-parties and Kim has not shown that he suffered any prejudice. *See Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002) (setting forth standard of review and noting that the trial court's broad decision to deny discovery "will not be disturbed except upon the clearest showing that [the] denial of discovery result[ed] in actual and substantial prejudice to the complaining litigant") (citation and internal quotation marks omitted).

The district court also did not abuse its discretion by denying Kim's motion for sanctions. *See Air Separation, Inc. v. Underwriters at Lloyd's of London*, 45 F.3d 288, 291 (9th Cir. 1995) (providing standard of review).

Kim's remaining contentions are unpersuasive.

AFFIRMED.

****

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CYRUS Y. KIM, Plaintiff, v. CITY OF FEDERAL WAY Defendant.	CASE NO. C08-688JLR ORDER DENYING MOTION FOR RECONSIDERATION

Before the court is Plaintiff Cyrus Kim's motion for reconsideration (Dkt. #49) of the court's

May 6, 2009 order granting summary judgment for Defendant City of federal Way (Dkt. #47). Pursuant to Local Rules W.D. Wash. CR 7(h)(1), motions for reconsideration are disfavored, and will ordinarily be denied unless there is a showing of (a)manifest error in the prior ruling, or (b) facts or legal authority which could not have been brought to the attention of the court earlier, through reasonable diligence. Because Mr. Kim has not made either showing with regard to the court's ruling on Defendant's motion for summary judgment, Mr. Kim's motion (Dkt. #49) is DENIED.

Dated this 15th day of May, 2009.

s/JAMES L. ROBART
United states District Judge

****

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CYRUS Y. KIM, Plaintiff, v. CITY OF FEDERAL WAY, Defendant.	CASE NO. C08-688JLR ORDER GRANTING MOTION FOR SUMMARY JUDGMENT AND DENYING MOTION FOR SANCTIONS

I. INTRODUCTION

Before the court are two motions: Defendant's motion for summary judgment (Dkt. #29) and Plaintiff Cyrus Kim's motion for sanctions (Dkt. #41). The court has reviewed the pleadings submitted in support of and in opposition to the motion and for the

following reasons the court GRANTS defendant's motion for summary judgment (Dkt. #29) and DENIES Plaintiff's motion for sanctions (Dkt. #41).

II. BACKGROUND & ANALYSIS

This matter arises out of Plaintiff Cyrus Kim's decision to hit golf balls in a public park in order to reduce belly fat. (Compl. (Dkt. #1) at 2.) On June 1, 2007, Mr. Kim was hitting golf balls in a park in Federal Way, Washington. (*Id.* at 3) Mr. Kim was asked by park employees to cease hitting golf balls as this activity was in contravention of Federal Way City Code ("FWCC") 11-75. (*Id.*) Mr. Kim told the employee to "[m]ind your own business." (*Id.*) Mr. Kim then went home. On June 15, 2007, Mr. Kim noticed that the park employees had posted a sign stating that "golf and archery are strictly prohibited at all times." (*Id.*) Mr. Kim wrote various letters to the Federal Way City Council ("City Council") arguing that the City ordinance prohibiting golfing in public parks was in violation of the "Ninth Amendment because the ordinance limits the fundamental right and liberty of daily exercise." (*Id.*) Mr. Kim did not receive a response to his letters.

On July 16, 2007, after finishing a jog in the park, Mr. Kim started his "body twist" exercises by hitting golf balls toward a soccer field in the park. (*Id.* at 4) A park supervisor stopped Mr. Kim and explained that hitting golf balls in the soccer field was not allowed. (*Id.*) Mr. Kim ceased hitting golf balls. On August 29, 2007, Mr. Kim was served at his home with an order of expulsion and notice of trespass by the director of parks and was warned not to enter the park or risk being arrested and prosecuted for trespass. (Id. at 5) Mr. Kim alleges

that order of expulsion and notice of trespass caused him many sleepless nights as well as abdominal pain and diarrhea. (*Id.*)

Mr. Kim brought this action against the City of Federal Way ("the City") alleging that FWCC 11-55 and 11-75 are unconstitutional. Mr. Kim seeks judgment against the City in the amount of $9,526,000 as well as damages for vicarious liability from the City Council, the director of parks, the police department, the City Manager, the City Attorney and the park employees in an amount upwards of $9,000,000. (Id. at 23.) The City moves for summary judgment on the basis that it did not infringe upon Mr. Kim's fundamental property or liberty interest and that FWCC 11-55 (which gives the City authority to expel a person from the city parks), and 11-75 (which prohibits the playing of golf in a city park), arise from the City's permissible authority to determine that certain activities are unsafe for its public parks and that the ordinances at issue are reasonably based upon legitimate concerns. (Mot. Dkt. #29) at 3.) The court agrees with the City.

Summary judgment is appropriate if the evidence, when viewed in the light most favorable to the non-moving party, demonstrates there is no genuine issue of material fact. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477, U.S. 317, 322 (1986); *Galen v. County of Los Angeles*, 477 F.3d 652, 658 (9th Cir. 2007). The moving party bears the initial burden of showing there is no material factual dispute and he or she is entitled to prevail as a matter of law. *Celotex*, 477 U.S. at 323. If the moving party meets its burden, the nonmoving party must go beyond the pleadings and identify facts which show a genuine issue for trial. *Cline v. Indus. Maint. Eng'g.*

& Contracting Co., 200 F.3d 1223, 1229 (9th Cir. 2000).

In order for Mr. Kim to establish a violation of his substantive due process right, he is required to prove that the enactment of FWCC 11-55 and 11-75 was "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare." *Kawaoka v. City of Arroyo Grande*, 17 F.3d 1227, 1234 (9th Cir. 1994) (quoting *Sinaloa Lake Owners Ass'n v. City of Simi valley*, 882 F.2d 1398, 1407 (9th Cir. 1989)). "Legislative acts that do not impinge on fundamental rights or employ suspect classifications are presumed valid, and this presumption is overcome only by a 'clear showing of arbitrariness and irrationality.'" *Kawaoka*, 17 F.3d at 1234 (quoting *Hodel v. Indiana*, 452 U.S. 314, 331-32 (1981)). In analyzing a substantive due process challenge, the court does "not require that the City's legislative acts actually advance its stated purposes, but instead look[s] to whether 'the government body could have had no legitimate reason for its decision.'" *Kawaoka, 17 F.3d at 1234* (emphasis in original) (quoting *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 690 (9th Cir. 1993)).

The court first finds that there is no fundamental right implicated in the application of these ordinances to this situation. Mr. Kim does not have a fundamental right to do belly exercise in a public park utilizing a golf club and baseballs or golf balls. Nor does the court find that the mere right to be present in a public park is a fundamental right. *See Doe v. City of Lafayette*, 377 F.3d 757, 768 (7th Cir. 1995). Thus, the proper test for determining the constitutionality of the City ordinances at issue is the rational basis test. That is, whether the city, in

passing FWCC 11-55 and 11-75, was acting in pursuit of permissible city objectives and, if so, whether the means adopted were reasonably related to accomplishment of these objectives. *See Reno v. Flores*, 507 U.S. 292, 295 (1993). The court is satisfied that the City's objectives, i.e., public safety in its park, is reasonably related to a ban on hitting golf balls in a public park. Accordingly, the court does not find that FWCC 11-75 is unconstitutional.

As for FWCC 11-55—the ordinance permitting the City to exclude people from city parks—the court likewise finds that this ordinance is reasonably related to the City's objectives in keeping its parks safe for the residents of Federal Way who use the park in a safe and respectful manner. Accordingly, the court finds that Mr. Kim's expulsion from the city park for hitting golf balls was not a violation of any fundamental right and that the City's ordinances did not violate Mr. Kim's due process rights.

Finally, the court has considered Mr. Kim's motion for sanctions against the City based on the City's "improper purpose of motion for summary judgment." Mr. Kim claims that the City's motion was brought for the "improper purpose to harass, cause unnecessary delay and needlessly increase the cost of litigation." (Mot. (Dkt. #41) at 1.) The court finds the opposite to be true and therefore denies Mr. Kim's motion for sanctions. The City has defended this frivolous lawsuit in a respectful and professional manner. The City's motion for summary judgment was thoughtful, accurate, and the proper method for requesting that this matter be dismissed.[2]

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[2] The court likewise declines to comment on Mr. Kim's statement regarding defense counsel's sanity.

III. CONCLUSION

For the reasons stated, the court GRANTS Defendant's motion for summary judgment (Dkt. #29) and DENIES Plaintiff's motion for sanctions (Dkt. #41). Mr. Kim's complaint is dismissed with prejudice.

Dated this 6th day of May, 2009.

s/JAMES L. ROBART
United States District Judge

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CYRUS Y. KIM Plaintiff(s), v. CITY OF FEDERAL WAY Defendant(s).	NO. 08-0688 JLR DEFENDANTS MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT Note on motion calendar: 4/3/09 (Without oral argument)

Comes now the Defendant, by and through their attorney of record, Brian A. Christensen, and makes the following motion:

1. RELIEF REQUESTED

Defendant, City of Federal Way, asks the court to grant summary judgment of dismissal of all claims made by the Plaintiff.

2. STATEMENT OF FACTS

The facts of this case are not in dispute. On June 1st, 2007, the Plaintiff was hitting golf balls in a park in Federal Way, Washington. (Pltf's Complaint, p. 3) He was asked to stop by park employees, as hitting golf balls was not allowed in City parks under FWCC 11-75. (Id) Mr. Kim told the employee to mind his own business and attempted to hit another golf ball. (Id.) The employee called his supervisor and Mr. Kim left the park. (Id.)

On July 16th, 2007, Plaintiff was again hitting golf balls in the same park. Park employees asked him to stop, as it violated park rules. (Pltf's Complaint, p. 4)

On August 29th, 2007, Mr. Kim was served, at his home, by a Federal Way police officer, a notice of trespass and an order or expulsion. (Pltf's Complaint p. 4) The order of expulsion, based upon FWCC 11-55, which provides, in part, that two violations of FWCC 11-75, in a twelve month period, can result in a years expulsion from the park. (See attached ordinances: Order of Expulsion; Notice of Trespass)

Plaintiff has brought suit claiming FWCC 11-55, FWCC 11-75 and the actions of the City employees violated his constitutional due process rights.

3. STATEMENT OF ISSUES

A. Did the City of Federal Way infringe upon a fundamental property or liberty interest of the Plaintiff?

B. Does the City of Federal Way's park ordinance arise from permissible authority and is it reasonably based upon legitimate concerns?

C. Did any actions of City of Federal Way employees infringe upon Plaintiff's civil rights?

4. EVIDENCE RELIED UPON

The moving party relies upon the declaration filed in support of this motion and the exhibits attached to said declaration.

5. AUTHORITY

A. Standard of Review.

Summary judgment is proper in any case where there is no genuine issue of material fact. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552 (1986). A defendant who seeks summary judgment on a plaintiff's cause of action must demonstrate the absence of a genuine issue of material fact either by (1) submitting summary judgment evidence that negates the existence of a material element of plaintiff's claim or (2) showing there is no evidence to support an essential element of plaintiff's claim. *Celotex Corp.*, 477 U.S. at 322-25, 106 S.Ct. at 2552-54; *J. Geils Band Employee Benefit Plan v. Smith Barney Shearson, Inc.*, 76 F.3d 1245, 1251 (1st Cir. 1996).

B. The City of Federal Way's park regulations are constitutionally sound.

A party challenging a statute on the basis that the statute violates the Due Process Clause of the Fourteenth Amendment bears the burden of demonstrating the scheme's unconstitutionality. *Lujan v. G & G Fire Sprinklers, Inc.*, 532 U.S. 189, 198, 121 S.Ct. 1446, 149 L.Ed.2d 391 (2001). Both substantive and procedural due process requires a protected liberty or property interest to be deprived by state action. The first injury in every due-process

challenge is whether the complaining party has been deprived of a protected interest in "property" or "liberty." *See Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59, 119 S.Ct. 977, 143 L.Ed.2d 130 (1999); *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

i) A fundamental right has not been infringed. If a fundamental right is involved, the State must show a compelling interest. Substantive due process forbids the government to infringe certain "fundamental" liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest. *See, e.g., Collins v. Harker Heights*, 503 U.S. 115, 125, 112 S.Ct. 1061, 117 L.Ed.2d 261 (1992); *Bowers v. Hardwick*, 478 U.S. 186, 191, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986). However, merely having a liberty or property interest guaranteed by the constitution is not equivalent to having a fundamental right. The court in *Doe v. City of Lafayette*, 377 F.3d 757, 772 (7th Cir. 2004), examined an issue similar to that at bar:

> Our first duty is to provide a "carful description" of the liberty interest that Mr. Doe seeks to have protected. *Washington v. Glucksberg*, 521 U.S. 702, 721, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997). Then, we must ask whether that interest is "fundamental," that is, whether it is "objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if [it] were sacrificed." *Id.* at 720-21, 117 S.Ct. 2258 (internal quotation marks and citations omitted). In undertaking these inquiries,

> we must remain mindful of the Supreme Court's admonition that
> we ha[ve] always been reluctant to expand the concept of substantive due process because guideposts for responsible decision making in this unchartered area are scarce and open-ended. By extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action. We must therefore exercise the utmost care whenever we are asked to break new ground in this field, lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of the Court. *Id.* at 720, 117 S.Ct. 2258 (internal quotation marks and citations omitted); *see also Mat's Paint & Coatings Ass'n v. City of Chicago*, 45 F.3d 1124, 1129 (7th Cir. 1995).

Doe v. City of Lafayette, 377 F.3d 757, at 768. In Lafayette, the plaintiff was a convicted sex offender that was banned from entering public parks. He sued, claiming the ban violates his constitutional rights. The Court analyzed caselaw and concluded that there was no authority for the proposition that the right to enter and loiter in a park is a "fundamental right." In the case at bar, the Plaintiff states that he has a fundamental right to exercise and hit golf balls in a park. Plaintiff cited the case of *Evans v. Newton*, 382 U.S. 296 (1996), for the proposition that a fundamental right to enter a park exists. However, the *Evans* case is an Equal Protection case, wherein the Defendant had sought to exclude citizens based upon their race. The case at

bar is not an Equal Protection or First Amendment expression case. [3]

There is no authority for the proposition that a citizen has a fundamental right to exercise or golf in a public park.

Because a ban on playing golf in a park, or even entering a park, does not infringe upon a fundamental right, the question in the case at bar involves the "rational basis standard." See *Doe v. City of Lafayette*, supra; *Reno v. Flores*, 507 U.S. 292, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993); *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 291 (5th Cir. 2001); *Simi Inv. Co. v. Harris County*, 236 F.3d 240 (5th Cir. 2000).

ii) The City of Federal Way had authority to make regulations concerning the use of their parks. The test of whether a regulation which does not affect a fundamental right violates substantive due process is whether the government was acting in pursuit of permissible state objectives and, if so, whether the means adopted were reasonably related to accomplishment of these objectives. Reno v. Flores, 507 U.S. 292, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993); *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 291 (5th Cir. 2001); *Simi Inv. Co. v. Harris County*, 236 F.3d 240 (5th Cir. 2000).

In the case at bar, the Washington State Constitution, article 11, section 11, provides "Any county, city, or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general

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[3] Plaintiff's complaint does mention Equal Protection once in passing, but there is no supporting argument or allegation of why Equal Protection would apply.

laws." Furthermore, RCW35.22.280, provides authority for the city of Federal Way to establish and regulate parks. The City code sections in dispute, FWCC 11-55 and FWCC11-75 are proper enactments of the City's authority. FWCC 11-55 is the ordinance that sets out the reasons a person can be expelled from the park. Plaintiff was "trespassed" from the park for violating sub paragraph (b)(5), committing more than one violation of this article within any 12-consecutive month period. It is unclear from Plaintiff's complaint how that section of the ordinance violates due process. Plaintiff admits to have being caught violating the park ordinance twice in a twelve month period.

FWCC 11-75 makes it unlawful to play golf in the park. Plaintiff was caught doing so and advised of the violation. He decided to disobey the rule. His complaint makes it clear that he did so to get exercise. Certainly there are other ways to exercise, and other place to golf. FWCC 11-75 states that the purpose of the regulation is to avoid interfering with or putting at risk other park users. Clearly, enjoyment and safety of park users is a legitimate City concern.

iii) Federal Way's ordinance is not vague. There is also a denial of due process where inherently vague statutory language permits selective law enforcement. *Smith v. Goguen*, 415 U.S. 566, 576, 94 S.Ct. 1242, 39 L.Ed.2d 605 (1974). In order to satisfy constitutional due-process requirements, the statute or regulation must provide adequate notice of the required or prohibited conduct. *Freeman United Coal Mining Co. v. Fed. Mine Safety & Health Review Comm'n*, 108 F.3d 358, 362 (D.C. Cir. 1997); *see Grayned v. City of Rockford*, 408 U.S. 104, 108, 92

S.Ct. 2294, 33 L.Ed.2d 222 (1972). Although the regulation must give fair warning-in light of common understanding and practices-of the prohibited conduct, the regulation is not required to be mathematically precise. *Grayned*, 408 U.S. 1t 110, 92 S.Ct. 2294. There is no question that the Plaintiff knew golfing was prohibited. There is no question that the ordinance prohibited golfing and the Plaintiff doesn't allege he didn't understand the ordinance. The ordinance is quite clear. Furthermore, Plaintiff does not allege he didn't know he could be "trespassed" from the park. The ordinance is clear.

iv) Plaintiff's allegations concerning individual employees of the City are vague, unsupported and groundless. Plaintiff fails to properly allege and support why the actions of the City employees violated his constitutional rights. They all followed the law, and Plaintiff has not properly supported his argument that the law in question was unconstitutional.

For instance, Plaintiff states that the City maintenance worker's actions make the city liable for stopping him from golfing. As discussed, there is no fundamental right to golf in a park. Similarly, Plaintiff claims the supervisor makes the city liable for stopping him from golfing on the second occasion. Plaintiff claims the Parks director makes the city liable for issuing the trespass notice and for inflicting excessive punishment. There is no allegation or evidence that she exceeded authority granted by the city ordinance.

C. Plaintiff's complaint should be dismissed as it is comprised of confusing anecdotes, misinterpreted laws and is completely lacking in legal justification.

To establish a substantive due process claim, a plaintiff must show that the government deprived him or her life, liberty, or property in such a way that "shocks the conscience." *Brittain v. Hansen*, 451 F.3d 982, 991 (9th Cir. 2006). There is nothing alleged that shocks the conscience. Similarly, to prevail on a procedural due process claim the Plaintiff must allege facts and law establishing how Defendants deprived him of a liberty or property interest and what lack of process occurred. *Wright v. Riveland*, 219 F.3d 905, 913 (9th Cir. 2000). Plaintiff doesn't speak to what lack of process occurred.

Plaintiff does mention overbreadth and vagueness, but not in the context of the facts of this case. He discusses ordinance provisions that don't apply here and legal concepts that make no sense and have no application to the causes of action he presents.

5. CONCLUSION

Plaintiff's complaint needs to be dismissed. There is no evidence that the City of Federal Way violated his Due Process rights and there is no evidence or law to support the allegations the City ordinances at issue have any constitutional infirmity.

SUBMITTED ON March 11, 2009.

By: s/Brian A. Christensen
BRIAN A. CHRISTENSEN, WSBA #24682
Attorney for Defendant

Supreme Court, U.S.
FILED
JUN 18 2010
OFFICE OF THE CLERK

No. 09 - 1202

In The
Supreme Court of the United States

Cyrus Y. Kim,
petitioner,
vs.

CITY OF FEDERAL WAY,
respondents.

On Petition for Writ of Certiorari
to United States Court of Appeals
for the Ninth Circuit

PETITION FOR REHEARING
(Order denied petition for a writ of certiorari)

Petitioner
Cyrus Y. Kim Pro Se
1807S. 308th CT. #11
Federal Way, WA 98003
(253) 946-1834

Questions presented for review

1. Is City of Federal Way's order of expulsion from a city public park for one year without due process of law on the speculative violation for no violation of the alleged unconstitutional city park ordinances constitutional?
2. Under Fourteenth Amendment, can the City government regulate City government conduct or regulate private behavior?
3. Are the City park ordinances regulating private behavior to protect individuals from privately inflicted harms for private wrong in the public park constitutional?
4. Are the City park ordinances limiting 80,000 residents' liberty without due process of law the Congress' authorized legislation by §5 of the Fourteenth Amendment?
5. Are U.S. both courts' judgments for the wrong cause of action on the groundless lower court case which contradicted all previous Supreme Court rulings right judgments?

A list of all parties

Petitioner:

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Respondent (1):

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I. OPINIONS BELOW

U.S. Appeals Court's order denied the motion for reconsideration rendered on January 27, 2010 is reprinted on p. 16.

U.S. Appeals Court's order affirmed district court's summary judgment rendered on December 14, 2009 is reprinted on p. 16.

U.S. district court's order denying motion for reconsideration rendered on May 15, 2009 is reprinted on p. 18.

U.S. district court's order granting motion for summary judgment and denying motion for sanctions rendered on May 6, 2009 is reprinted on p. 19.

II. JURISDICTION

(A) Jurisdiction is conferred upon the Court by 28 U.S.C. §1331 and §1367.

(B) On June 7, 2010, this Court denied petition for a writ of certiorari. On June 18, 2010 is timely, because it is less than 25 days.

III. REASONS FOR REHEARING

The denial of petition for a writ of certiorari disregarded the following important unconstitutional factors:

1. it disregarded lower courts' wrong judgments for wrong cause of action on the groundless lower court case which contradicted all previous Supreme Court rulings;
2. it disregarded that the City of Federal Way's order of expulsion from a City public park for one year without a hearing on the speculative violation for no violation of the alleged unconstitutional city park

ordinances deprived petitioner Kim of liberty for one year without due process of law and unconstitutional;

3. it disregarded that the city park ordinances which limit 80,000 residents' liberty without due process of law are unconstitutional;
4. it disregarded that under Fourteenth Amendment, the City government could regulate City government conduct but could not regulate private behavior;
5. it disregarded that the City park ordinances regulating private behavior to protect individuals from privately inflicted harms in the public park for private wrong are unconstitutional;
6. it disregarded that the City park ordinances limiting 80,000 residents' liberty without due process of law were not the Congress' authorized legislation by §5 of the Fourteenth Amendment.

IV. STATEMENT OF CASE

A. Cause of action

Kim was challenging the constitutionality of City of Federal Way's order or punishment deprived petitioner Kim of liberty for one year on the speculative violation — no violation — of the alleged unconstitutional park ordinances without a hearing; and challenging the constitutionality of the park ordinances regulating private behavior to protect individuals from privately inflicted harms for private wrong; and claiming damages for infliction of mental distress caused by unusual punishment on the basis of state tort law.

B. City of Federal Way's order of expulsion from a City public park for one year.

City of Federal Way ordered not to enter a City park "for any reason whatsoever for a period of one year" under the reason committed "criminal trespass" upon the City public park two times on the speculative violation of the alleged unconstitutional City park ordinances as below:

The City's
ORDER OF EXPULSION AND NOTICE OF TRESPASS
This letter is An Order of Expulsion and Notice of trespass, pursuant to Federal Way City Code 11-55 and you are hereby informed that as of today, Cyrus Kim, you are forbidden to enter the premises of Steel Lake Park located at 2410 S. 312 St. and 2645 S. 312 ST., Federal Way, WA for any reason whatsoever for a period of one year.
To enter such property may result in prosecution for the crime of Trespass under RCW 9A.52 and related municipal code section(s). A violation by entry upon the listed property may result in a fine, imprisonment, or both. THIS NOTICE IS VALID FOR ONE YEAR FROM THE DATE OF ISSUANCE.
You are hereby **Trespassed** from Steel Lake Park for **violation of FWCC 11-75(1) two times** within the last 12-consecutive months. **On at least two separate occasions** in the last 12-consecutive months you illegally practiced golf in a Federal Way Park without authorization and, furthermore, caused risk of injury to another person in doing so. One June 1, 2007, you were asked by Parks employees to stop hitting real golf balls in Steel Lake Park. The incident was investigated by the Police Department, case number 07-8527. In his report, Officer Tucker noted that he told you to use plastic practice golf balls in the Park, not real ones. On July 16, 2007, you were again seen hitting real golf balls in Steel Lake Park and were asked to stop by a parks employee.
A copy of this letter shall be sent to the Federal Way Police Department pursuant to FWCC 11-55(d) for enforcement of this order.
s/ Donna Hanson 8-28-07
Director of Parks

C. City park ordinances, FWCC 11-55 and 11-75, regulating private behavior to protect from privately inflicted harms.

The city park ordinances of FWCC 11-55 and 11-75 regulate private

behavior to protect from privately inflicted harms without any hearing provision.

1. FWCC 11-55 (Expulsion from parks)

(a) In addition to another penalty imposed pursuant to this article, the director or designee may order the expulsion of any person from any park for a period of one to seven days if he or she observes such person:

(1) Using abusive or disruptive language or engaging in conduct that disrupts a park facility or program.

(2) Directing ethnic or offensive remarks at another person based on such person's actual or perceived race or ethnic group, nationality, religion, disability, sex or sexual orientation.

(3) Using tobacco products in an unauthorized area or facility.

(4) Causing injury or risk of injury to another person or persons.

(5) Causing damage or risk of damage to city property.

(6) Violating any provision of this article.

(b) The director or designee may order the expulsion of any person from any park for a period of seven days to one year if such person:

(1) Has been expelled from the park two or more times in any 30-day period.

(2) Causes injury to another person.

(3) Sells, possesses or uses alcohol or illegal drugs.

(4) Possesses or uses any weapon.

(5) Commits more than one violation of this article in any 12-consecutive-month period.

(c) Any order of expulsion under this section shall be in writing and shall be sent by certified mail to the person expelled at his or her last known address or delivered in person.

(d) The director or designee may forward the written notice of expulsion along with the certified mail receipt to the department of public safety (i.e. police department).

(1) The written notice of expulsion shall be a notice of trespass.

(2) Any person on city park property, in violation of the written notice of expulsion, will be guilty of trespass.

(3) The notice of trespass and expulsion will expire on the date indicated in the written notice of expulsion.

(e) Any person who enters a park during a period during which he or she has been expelled under subsection (a) or (b) of this section is guilty of violating this article and will be subject to the enforcement in FWCC 11-54.

2. FWCC 11-75 (Games and sports)

FWCC 11-75 makes all recreational scope of exercise unlawful to protect individuals from individually inflicted harms in the public parks and requires getting the director's authorization but no provision of how to get the director's authorization which violates the due process clause.

FWCC 11-75 (Games and sports):

> It is unlawful to practice or play baseball, softball, football, hockey, tennis, badminton or other games of like character or to hurl or propel any airborne or other object in such a manner as to interfere with or put at risk other park users.
> (1) It is unlawful to practice or play golf or archery in any city park, unless authorized by the director.

D. No violations of the City park ordinances in two occasions.

In two occasions, Kim didn't violate any provision of the park ordinances, because Kim's activity for the recreational scope of exercise scared nobody and there was no risk to injure anybody at all. So, the City's expulsion order for one year was completely based on the committed criminal trespass twice upon the public park by FWCC 11-55(d)(1) and (2) which was unconstitutional.

Occasion One

There is an approximately 140-yard long and 25-yard wide open sand space on the beach in the Steel Lake public park. Kim always used #9 iron for 30 min. exercise sometimes hitting a baseball or soccer ball, but a driver-club only four times during almost two years.

On June 1, 2007 early morning between 6:00 and 8:00, after ten minute dumbbell exercise and five minute body swing exercise with a golf club without

hitting any ball, Kim made three circled marks at the point of approximately 60, 70, and 80 yards away from a hitting area to try approach shots. After sixth shot, one woman came with a dog and sat and was watching the golf balls' dropping approximately 30 yards away from the golf balls' dropping area and 100 yards away from the hitting area. After cleaning the park restrooms, Young Yi approached to Kim and stopped the exercise. When Kim asked "why," he answered "for public safety." After saying, "mind your own business," Kim tried to hit another ball. Young Yi threatened to call 911. When Kim responded, "go ahead," he called to his supervisor. During argument for a while, the woman disappeared. Kim returned home, omitting the rest exercise including jogging.

On June 15, 2007, Kim read City Ordinance 91-11[1] posted on the fence at first time, which could not be seen easily as, "Firework, firearms, alcoholic beverages, controlled substances, golf and archery are strictly prohibited at all times."

On June 25, 2007, Kim mailed three letters, one for the City Manager, one for City Council, and one for manager of park maintenance office, indicating the City Ordinance's unconstitutional factors for revision, otherwise, Kim would file a suit claiming huge amounts beyond the price for limited fundamental right.

Nobody responded at all.

Occasion Two:

On July 16, 2007, after dumbbell, parallel and monkey bar, body swing

[1] Ordinance 91-11 was different from the current FWCC 11-55 and 11-75.

exercise, and 30 minute jogging, still twenty minutes were left to eight o'clock. Kim was curious to hit golf balls toward the artificial soccer field. After having covered a hitting mat on the outside of the soccer field, the sparse lawn area, in order to prevent any damage to the lawn, Kim was hitting golf balls. A man approached and said that he was a supervisor. He stopped the hitting golf balls. When Kim asked, "no damage here, no damage there, nobody is there, why not?" He answered:

In the soccer field only soccer games are allowed; baseball batting practice, any other game or practicing except the soccer game, or even walking around the soccer field with a dog is not allowed, because Soccer Association donated $500,000 for the artificial soccer field.

During the argument, a woman came walking with her dog. The supervisor said, "Madam, walking with a dog around the soccer field is not allowed." The dog was so friendly and understood various human orders.

E. U.S. district court's summary judgment

1. Judgment on the wrong ground of case of *Kawaoka*

U.S. district court judge granted summary judgment on the wrong ground of a 9th Circuit ruling of *Kawaoka*– permissible or legitimate city objectives for public safety- -as below:

> P. 22: In order for Mr. Kim to establish a violation of his substantive due process right, he is required to prove that the enactment of FWCC 11-55 and 11-75 was "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare." *Kawaoka v. City of Arroyo Grande*, 17 F.3d 1227, 1234 (9th Cir. 1994)...

> P. 23: That is, whether the City, in passing FWCC 11-55 and 11-75 was acting in pursuit of permissible city objectives and, if so, whether the means adopted were reasonably related to accomplishment of these objectives. *See Reno v. Flores*, 507 U.S. 292, 295 (1993).
> P. 23: As for FWCC 11-55—the ordinance permitting the City to exclude people from city parks—the court likewise finds that this ordinance is reasonably related to the City's objectives in keeping its park safe for the residents of Federal Way who use the park in a safe and respectful manner.

In *Kawaoka*, the ordinance was to regulate the city government conduct of the city of Arroyo Grande for the general land-use plan and temporary water moratorium. So, the ordinance was for "permissible or legitimate city objectives for public health, safety, and general welfare" under Fourteenth Amendment.

But the park ordinances regulating private behavior to protect individuals from privately inflicted harms —private wrong— in the public parks were not for "permissible city objectives for public safety," because under Fourteenth Amendment, the City has no duty to protect individuals from privately inflicted harms, which are for private wrong and criminal law and tort law govern such conduct, but city ordinances cannot. So, the permissible city objectives for public safety were groundless.

The case of *Reno v. Flores* is completely unrelated to this case.

2. The summary judgment for the wrong cause of action.

> P. 22: Mr. Kim does not have a fundamental right to do belly exercise in a public park utilizing a golf club and baseballs or golf balls... *See Doe v. City of Lafayette*, 377 F.3d 757, 788 (7th Cir. 1995). The court is satisfied that the City's objectives, i.e., public safety in its park, is reasonably related to a ban on hitting golf balls in a public park. Accordingly, the court does not find that FWCC 11-75 is unconstitutional...
> P. 23: Accordingly, the court finds that Mr. Kim's expulsion from the city park for hitting golf balls was not a violation of any fundamental right and

that the City's ordinances did not violate Mr. Kim's due process rights.

> The case of *Doe v. City of Lafyette* is as follows:
> In February of 2000, the City of Lafyette, Indiana, issued John Doe, a convicted sex offender, a letter, informing him that he was banned from all public parks under the City's Jurisdiction. In November of 2000, Mr. Doe initiated this action, alleging that the ban violated his rights under the First and Fourteenth Amendments of the Constitution of the United States. The United States District Court for the Northern District of Indiana granted summary judgment to the City.

However, in *Roth v. Board of regents*, Supreme Court held as:

> In a Constitution for **a free people**, there can be no doubt that the meaning of **"liberty" must be broad indeed...** (408 U.S. 564 (1972)).

Kim was challenging the constitutionality of City's actions of the deprivation of Kim's liberty **for one year** without due process of law on the speculative violation for no violation of the park ordinances and challenging the constitutionality of the City park ordinances, but was not challenging that Kim has fundamental right to exercise hitting golf balls in the public park. So, district court judgment that Kim has no fundamental right for hitting golf balls in the public park was for wrong cause of action on the wrong ground.

F. U.S. appeals court's affirmed judgments for wrong cause of action on the wrong ground of case of *Kawaoka*

Appeals court three judges affirmed under same "the permissible or legitimate city objectives for public safety" on the ground of *Kawaoka*.

> Cyrus Yoo Kim appeals pro se from the district court's summary judgment for defendant in his 42 U.S.C. §1983 action alleging denial of his fundamental right to exercise by hitting golf balls in a public park...We review de novo...We affirm.
> The district court properly granted summary judgment for defendant because Kim failed to show that he has a fundamental right to exercise

> by hitting golf balls in a public park...
> Moreover, the City's ordinances prohibiting the hitting of golf balls in public parks and sanctioning those who do are rationally related to the legitimate public interest of safety in city park. *See Kawaoka v. City of Arroyo Grande*, 17 F.3d 1227, 1234 (9th Cir. 1994)...

First, Kim didn't claim that Kim had a fundamental right to exercise by hitting golf balls in a public park--wrong cause of action.

Second, as stated at page 8, in case of *Kawaoka,* the ordinance of the city of Arroyo Grande was to regulate the city government conduct of the city of Arroyo Grande for the general land-use plan and temporary water moratorium. So, the ordinance of city Arroyo Grande had "the permissible or legitimate city objectives for public safety" but the City's park ordinances regulating private behavior to protect individuals from privately inflicted harms —private wrong— do not have "the permissible or legitimate city objectives for public safety." Criminal law and torts law govern the private wrong but city ordinances cannot. So, the "permissible or legitimate city objectives for public safety" was groundless.

Accordingly, appeals court's affirmed order was wrong cause of action and wrong ground of "permissible or legitimate city objectives for public safety."

V. ARGUMENT

1. State actions

Actions of any governmental entity gives rise to state action for the purposes of constitutional limitations. Any subdivision of a state, be it an administrative

agency or an independent political subdivision, such as a city, represents government or state authority for constitutional restrictions on its actions.

The Constitution applies to government at all levels — federal, state, and local — and to the actions of government officers at all levels. The Constitution generally does not apply to private entities or actors.

Accordingly, all orders of City of Federal Way's employees are state actions which must be scrutinized under Fourteenth Amendment.

2. Definition of the park from the Supreme Court ruling.

In *Evans v. Newton*, 382 U.S. 296 (1966), the Supreme Court held as:

> that **running the park was a public function and that it had to comply with the Constitution even if managed by a private entity.** Justice Douglas, writing for the Court, explained: "The service rendered even by a private park of this character is **municipal in nature... A park** ... is more like a fire department or police department that traditionally serves the community. Mass recreation through the use of parks is plainly in the public domain... (*Id.* at 301- 302).

3. City park ordinances regulating private behavior to protect individuals from individually inflicted harms — unconstitutional under Fourteenth Amendment.

In 1879, the Supreme Court declared that the provisions of Fourteenth Amendment...all have reference to State action exclusively, and not to any action of private individuals. The *Civil Right Cases*, in 1883, are generally credited with mandating the requirement for state action (*Civil Right Cases*, 109 U.S. 3 (1883)).

In 1975, Congress enacted The Civil Right Act of 1975 provided that all persons were "entitled to the full and equal enjoyment of the accommodations,

advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement. The law specifically prohibited discrimination based on race and color or on the basis of any previous condition of servitude. In other words, the law prohibited private race discrimination and provided both criminal and civil penalties.

The Supreme Court, in 1883, had held that Congress only could regulate government conduct and could not regulate private behavior under the Fourteenth Amendment (*Civil Right Cases*, 109 U.S. 3 (1883)). The Supreme Court, with only Justice John Harlan dissenting, declared the law unconstitutional. The Court ruled that the Fourteenth Amendment applies just to state and local government actions, not to private conduct. Justice Bradley writing for the Court, said that the "Fourteenth Amendment... is prohibitory upon the States... Individual invasion of individual rights is not the subject-matter of the amendment." The Court explained that private action was governed by state law and not by the United States.

Accordingly, the City council of the City government of Federal Way could regulate city government conduct but could not regulate private behavior **to protect individuals from individually inflicted harms** under Fourteenth Amendment. Hence, the park ordinances regulating the private conduct requiring high moral standard (FWCC 11-55(a)(1)); regulating private conduct and discrimination based on race, nationality, religion, disability, and sexual orientation (FWCC11-55(a)(2)); regulating the conduct which U.S. Alcohol,

Tobacco, and Controlled Substance Law is already regulating (FWCC11-55(a)(3) and (b)(3)); regulating the conduct which State Arms law is regulating (FWCC11-55 (b)(4)); regulating individual invasion of individual rights (FWCC 11-55(a)(4) and (5) and (b)(2)) are **unconstitutional**.

4. The City council of City Federal Way does not have power to enact ordinances limiting 80,000 residents' liberty without due process of law pursuant to §5 of Fourteenth Amendment.

Only the Congress has the power to enforce, by appropriate legislation to limit liberty pursuant to §5 of Fourteenth Amendment but City council of City Federal Way has not. Therefore, the park ordinances limiting 80,000 residents' liberty without due process clause are unconstitutionally enacted.

5. Definition of liberty from Supreme Court ruling

In *Roth v. Board of regents*, Supreme Court held as:

> In a Constitution for a **free people**, there can be no doubt that the meaning of **"liberty"** must be **broad indeed**... (408 U.S. 564 (1972)).

> The Supreme Court has held that **some liberties** are so important that they are deemed to be **"fundamental rights"** and that **generally the government cannot infringe upon them unless strict scrutiny**, and in ***Moore v. City of East Cleveland***, 431 U.S. 494, 503 (1977), the Supreme Court has said that **fundamental rights include those liberties** that are "deeply rooted in this Nation's history and tradition."

6. Deprivation of liberty from Supreme Court Rulings

> In *Cummings v. Missouri*, 71 U.S. 277, 18 L.Ed 356 (1866), U.S. Supreme Court explained that "[t]he deprivation of any rights, civil or political, previously enjoyed, may be punishment."

> In *Washington v. Harper*, 109 Nev.966, 860 P.2d 705 (1903), the Supreme Court separated procedural and substantive issues regarding the authority

of prison administrator to give anti-psychotic drugs to an inmate **against his will**. The Supreme Court found that the administrator of anti-psychotic drugs to a defendant under certain circumstances constituted a **deprivation of liberty that was protected by due process.**

In *Hudson v. Palmer*, 468 U.S. at 530, 104 S.Ct. at 3202, 82 L.Ed.2d at 405 (1984), the Supreme Court has held:
that **intentional infliction of harm on the person** or property of a prisoner **violates due process and that procedural due process principles require the state to grant a post-deprivation hearing** to prisoners who allege intentional destruction of their liberty or property. *Hudson v. Palmer*, 468 U.S. 517,104 S.Ct. 3194, 82L.Ed.2d 393 (1984), on remand 744 F.2d 22(4th Cir. 1984).

7. City of Federal Way's order deprived Kim of liberty without due process of law for one year for no violation of the unconstitutional City park ordinances — unconstitutional

As stated above, in two occasions, Kim scared no body and injured nobody and Kim has access right to any public park. So, the City's expulsion order from the public park for one year under the reason committed criminal trespass upon the City park on the speculative violation of the unconstitutional park ordinances was the order violated due process clause and excessive punishment which **deprived Kim of liberty for one year without due process of law.**

8. Both courts' judgments for wrong cause of action on the wrong ground of lower court case of *Kawaoka* completely contradicted Supreme Court Rulings.

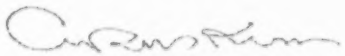
As stated on page 7 - 10, both courts' judgments on the ground of Ninth Circuit court case of ***Kawaoka*** were groundless and contradicted all previous Supreme Court rulings as stated above. All previous Supreme Court rulings make clear FWCC 11-55 and 11-75 unconstitutional and the City's order of expulsion from the public park for one year without due process of law was

unconstitutional and the order clearly deprived Kim of liberty, the fundamental right in the form of liberty without due process of law for one year.

VI. CONCLUSION (RELIEF SOUGHT)

For all reasons stated above, petitioner respectfully request that this Court grant review of this case.

Respectfully submitted on June 18, 2010,



Cyrus Y. Kim Pro Se

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CYRUS Y. KIM, Appellant/Plaintiff, v. CITY OF FEDERAL WAY, Appellee/Defendant.	CASE NO. 09 - 35504 D.C. No. 2:08-cv-0688- JLR Western District of Washington, Seattle ORDER (FILED JAN 27 2010)

Before: ALARCÓN, TROTT, AND TASHIMA, Circuit Judges.

Kim's motion for reconsideration is construed as a petition for penal rehearing, and, as such, the petition is denied.

No further filings shall be accepted in this closed case.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CYRUS Y. KIM, Appellant/Plaintiff, v. CITY OF FEDERAL WAY, Appellee/Defendant.	CASE NO. 09 - 35504 D.C. No. 2:08-cv-0688- JLR MEMORADOM* (FILED DEC 14 2009)

Appeal from the United States District Court for the Western District of Washington James L. Robart, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, AND TASHIMA, Circuit Judges.

Cyrus Yoo Kim appeals pro se from the district court's summary judgment for defendant in his 42 U.S.C. §1983 action alleging denial of his fundamental right to exercise by hitting golf balls in a public park. We have jurisdiction under 28 U.S.C. §1291. We review de novo. *Brown v. Cal. Dep't of Corr.*, 554 F.3d 747, 749 (9th Cir. 2009). We affirm.

The district court properly granted summary judgment for defendant because Kim failed to show that he has a fundamental right to exercise by hitting golf balls in a public park. *See Shanks v. Dressel*, 540 F.3d 1082, 1087 (9th Cir. 2008) ("To state a substantive due process claim, the plaintiff must show as a threshold matter that s state actor deprived it of a constitutionally protected life, liberty or property interest.") Moreover, the City's ordinances prohibiting the hitting of golf balls in public parks and sanctioning those who do are rationally related to the legitimate public interest of safety in city park. *See Kawaoka v. City of Arroyo Grande*, 17 F.3d 1227, 1234 (9th Cir. 1994) ("Legislative acts that do not impinge on fundamental rights or employ suspect classifications are presumed valid, and this presumption is overcome only by a clear showing of arbitrariness and irrationality.") (citation and internal quotation marks omitted).

The district court did not abuse its discretion by denying the motion to compel discovery because Kim's interrogatories were directed at non-parties and

** The panel unanimously finds his case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Kim has not shown that he suffered any prejudice. *See Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002) (setting forth standard of review and noting that the trial court's broad decision to deny discovery "will not be disturbed except upon the clearest showing that [the] denial of discovery result[ed] in actual and substantial prejudice to the complaining litigant") (citation and internal quotation marks omitted).

The district court also did not abuse its discretion by denying Kim's motion for sanctions. *See Air Separation, Inc. v. Underwriters at Lloyd's of London*, 45 F.3d 288, 291 (9th Cir. 1995) (providing standard of review).

Kim's remaining contentions are unpersuasive.

AFFIRMED.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CYRUS Y. KIM, Plaintiff, v. CITY OF FEDERAL WAY Defendant.	CASE NO. C08-688JLR ORDER DENYING MOTION FOR RECONSIDERATION

Before the court is Plaintiff Cyrus Kim's motion for reconsideration (Dkt. #49) of the court's May 6, 2009 order granting summary judgment for Defendant City of federal Way (Dkt. #47). Pursuant to Local Rules W.D. Wash. CR 7(h)(1),

motions for reconsideration are disfavored, and will ordinarily be denied unless there is a showing of (a)manifest error in the prior ruling, or (b) facts or legal authority which could not have been brought to the attention of the court earlier, through reasonable diligence. Because Mr. Kim has not made either showing with regard to the court's ruling on Defendant's motion for summary judgment, Mr. Kim's motion (Dkt. #49) is DENIED.

Dated this 15th day of May, 2009.

s/JAMES L. ROBART
United states District Judge

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CYRUS Y. KIM, Plaintiff, v. CITY OF FEDERAL WAY, Defendant.	CASE NO. C08-688-JLR ORDER GRANTING MOTION FOR SUMMARY JUDGMENT AND DENYING MOTION FOR SANCTIONS

I. INTRODUCTION

Before the court are two motions: Defendant's motion for summary judgment (Dkt. #29) and Plaintiff Cyrus Kim's motion for sanctions (Dkt. #41). The court has reviewed the pleadings submitted in support of and in opposition to the motion and for the following reasons the court GRANTS defendant's motion for summary judgment (Dkt. #29) and DENIES Plaintiff's motion for sanctions (Dkt.

#41).

II. BACKGROUND & ANALYSIS

This matter arises out of Plaintiff Cyrus Kim's decision to hit golf balls in a public park in order to reduce belly fat. (Compl. (Dkt. #1) at 2.) On June 1, 2007, Mr. Kim was hitting golf balls in a park in Federal Way, Washington. (*Id.* at 3) Mr. Kim was asked by park employees to cease hitting golf balls as this activity was in contravention of Federal Way City Code ("FWCC") 11-75. (*Id.*) Mr. Kim told the employee to "[m]ind your own business." (*Id.*) Mr. Kim then went home. On June 15, 2007, Mr. Kim noticed that the park employees had posted a sign stating that "golf and archery are strictly prohibited at all times." (*Id.*) Mr. Kim wrote various letters to the Federal Way City Council ("City Council") arguing that the City ordinance probibiting golfing in public parks was in violation of the "Ninth Amendment because the ordinance limits the fundamental right and liberty of daily exercise." (*Id.*) Mr. Kim did not receive a response to his letters.

On July 16, 2007, after finishing a jog in the park, Mr. Kim started his "body twist" exercises by hitting golf balls toward a soccer field in the park. (*Id.* at 4) A park supervisor stopped Mr. Kim and explained that hitting golf balls in the soccer field was not allowed. (*Id.*) Mr. Kim ceased hitting golf balls. On August 29, 2007, Mr. Kim was served at his home with an order of expulsion and notice of trespass by the director of parks and was warned not to enter the park or risk being arrested and prosecuted for trespass. (Id. at 5) Mr. Kim alleges that order of expulsion and notice of trespass caused him many sleepless nights as well as

abdominal pain and diarrhea. (*Id.*)

Mr. Kim brought this action against the City of Federal Way ("the City") alleging that FWCC 11-55 and 11-75 are unconstitutional. Mr. Kim seeks judgment against the City in the amount of $9,526,000 as well as damages for vicarious liability from the City Council, the director of parks, the police department, the City Manager, the City Attorney and the park employees in an amount upwards of $9,000,000. (Id. at 23.) The City moves for summary judgment on the basis that it did not infringe upon Mr. Kim's fundamental property or liberty interest and that FWCC 11-55 (which gives the City authority to expel a person from the city parks), and 11-75 (which prohibits the playing of golf in a city park), arise from the City's permissible authority to determine that certain activities are unsafe for its public parks and that the ordinances at issue are reasonably based upon legitimate concerns. (Mot. Dkt. #29) at 3.) The court agrees with the City.

Summary judgment is appropriate if the evidence, when viewed in the light most favorable to the non-moving party, demonstrates there is no genuine issue of material fact. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477, U.S. 317, 322 (1986); *Galen v. County of Los Angeles*, 477 F.3d 652, 658 (9th Cir. 2007). The moving party bears the initial burden of showing there is no material factual dispute and he or she is entitled to prevail as a matter of law. *Celotex*, 477 U.S. at 323. If the moving party meets its burden, the nonmoving party must go beyond the pleadings and identify facts which show a genuine issue for trial. *Cline v.*

Indus. Maint. Eng'g. & Contracting Co., 200 F.3d 1223, 1229 (9th Cir. 2000).

In order for Mr. Kim to establish a violation of his substantive due process right, he is required to prove that the enactment of FWCC 11-55 and 11-75 was "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare." *Kawaoka v. City of Arroyo Grande*, 17 F.3d 1227, 1234 (9th Cir. 1994) (quoting *Sinaloa Lake Owners Ass'n v. City of Simi valley*, 882 F.2d 1398, 1407 (9th Cir. 1989)). "Legislative acts that do not impinge on fundamental rights or employ suspect classifications are presumed valid, and this presumption is overcome only by a 'clear showing of arbitrariness and irrationality.'" *Kawaoka*, 17 F.3d at 1234 (quoting *Hodel v. Indiana*, 452 U.S. 314, 331-32 (1981)). In analyzing a substantive due process challenge, the court does "not require that the City's legislative acts actually advance its stated purposes, but instead look[s] to whether 'the government body could have had no legitimate reason for its decision.'" *Kawaoka, 17 F.3d at 1234* (emphasis in original) (quoting *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 690 (9th Cir. 1993)).

The court first finds that there is no fundamental right implicated in the application of these ordinances to this situation. Mr. Kim does not have a fundamental right to do belly exercise in a public park utilizing a golf club and baseballs or golf balls. Nor does the court find that the mere right to be present in a public park is a fundamental right. *See Doe v. City of Lafayette*, 377 F.3d 757, 768 (7th Cir. 1995). Thus, the proper test for determining the constitutionality of

the City ordinances at issue is the rational basis test. That is, whether the city, in passing FWCC 11-55 and 11-75, was acting in pursuit of permissible city objectives and, if so, whether the means adopted were reasonably related to accomplishment of these objectives. *See Reno v. Flores*, 507 U.S. 292, 295 (1993). The court is satisfied that the City's objectives, i.e., public safety in its park, is reasonably related to a ban on hitting golf balls in a public park. Accordingly, the court does not find that FWCC 11-75 is unconstitutional.

As for FWCC 11-55—the ordinance permitting the City to exclude people from city parks—the court likewise finds that this ordinance is reasonably related to the City's objectives in keeping its parks safe for the residents of Federal Way who use the park in a safe and respectful manner. Accordingly, the court finds that Mr. Kim's expulsion from the city park for hitting golf balls was not a violation of any fundamental right and that the City's ordinances did not violate Mr. Kim's due process rights.

Finally, the court has considered Mr. Kim's motion for sanctions against the City based on the City's "improper purpose of motion for summary judgment." Mr. Kim claims that the City's motion was brought for the "improper purpose to harass, cause unnecessary delay and needlessly increase the cost of litigation." (Mot. (Dkt. #41) at 1.) The court finds the opposite to be true and therefore denies Mr. Kim's motion for sanctions. The City has defended this frivolous lawsuit in a respectful and professional manner. The City's motion for summary judgment was thoughtful, accurate, and the proper method for requesting that

this matter be dismissed.[2]

III. CONCLUSION

For the reasons stated, the court GRANTS Defendant's motion for summary judgment (Dkt. #29) and DENIES Plaintiff's motion for sanctions (Dkt. #41). Mr. Kim's complaint is dismissed with prejudice.

Dated this 6th day of May, 2009.

s/JAMES L. ROBART
United States District Judge

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[2] The court likewise declines to comment on Mr. Kim's statement regarding defense counsel's sanity.

CERTIFICATION

I declare under penalty of perjury that the foregoing is true and correct: This petition for rehearing is restricted to the necessary ground specified in Rule 39 and it is presented in good faith and not for delay.

Date: June 18, 2010.

Cyrus Y. Kim Pro Se
1807 S. 308th CT. #11
Federal Way, WA 98003
253 946-1834

DECLARATION

Petitioner Cyrus Y. Kim, I declare under penalty of perjury under United States laws that the following documents and the foregoing are true and correct:

1. All facts in motion for leave to file petition for rehearing in forma pauperis are true and correct.

2. All facts and reprinted documents in petition for rehearing are true and correct and complied with the page limit pursuant to Rule 39.

Date: June 18, 2010.

Cyrus Y. Kim Pro Se
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